

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Vision Latina Broadcasting, Inc.)	File No.: EB-10-HU-0068
)	
Licensee of Station KBPO)	NAL/Acct. No.: 201132540003
Port Neches, Texas)	
Facility ID #: 68762)	FRN: 0010019115
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: June 30, 2011

Released: June 30, 2011

By the Resident Agent, Houston Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Vision Latina Broadcasting, Inc. (“Vision Latina Broadcasting”), licensee of Station KBPO, Port Neches, Texas (the “Station”), apparently willfully and repeatedly violated sections 73.1125 and 73.3526 of the Commission’s rules (“Rules”)¹ by failing to maintain: (1) a main studio with a meaningful staff and management presence; and (2) a complete public inspection file and make that file available. We conclude that Vision Latina Broadcasting is apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000). In addition, no later than 30 days from the date of this NAL, Vision Latina Broadcasting must submit a statement signed under penalty of perjury by an officer or director of the licensee that: (1) Station KBPO’s main studio is staffed full-time by full-time managerial and staff personnel; and (2) Station KBPO’s public inspection file is complete.

II. BACKGROUND

2. On December 2, 2010, in response to a complaint, an agent from the Enforcement Bureau’s Houston Office (“Houston Office”) attempted an inspection of Station KBPO’s main studio in Port Arthur, Texas. The agent stopped by the main studio several times throughout the day, including during regular business hours. Each time, the entrance to the main studio was locked and no employees were present.

3. On December 9, 2010, during normal business hours, an agent from the Houston Office again attempted an inspection of the main studio. The only employee present was an announcer, who stated that Vision Latina Broadcasting’s President was scheduled to return from Mexico on December 13, 2010, and acknowledged that there was no manager at the Station. The agent requested to inspect the Station’s public inspection file, and found that it did not contain a current copy of the station authorization, service contour map, the most recent ownership report, Public and Broadcasting manual, or any issues-programs lists. When the agent inquired about the missing documents, the announcer responded that he did not know the location of the missing documents and that the company’s President would provide the missing documents to the agent when he returned from Mexico.

¹ See 47 C.F.R. §§ 73.1125, 73.3526.

4. Relying on the announcer's claim that the President would be back at the Station on December 13, 2010, the agent returned to the Station on that date to reattempt an inspection of the Station's main studio. During this visit, the agent observed three individuals in the broadcast booth. One employee exited the booth and informed the agent that Vision Latina Broadcasting's President remained in Mexico and would not return until sometime in January 2011. The employee and the two other disc jockeys in the booth refused to make any part of the public inspection file available for inspection.

III. DISCUSSION

5. Section 503(b)(1) of the Communications Act of 1934, as amended ("Act"), provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable to the United States for a forfeiture penalty.² Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.³ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,⁴ and the Commission has so interpreted the term in the section 503(b) context.⁵ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁶ "Repeated" means that the act was committed or omitted more than once, or last more than one day.⁷

6. Section 73.1125(a) of the Rules (known as the "main studio rule") requires broadcast stations to maintain a main studio.⁸ As the Commission has explained, "[a] station must equip the main studio with production and transmission facilities that meet applicable standards, maintain continuous program transmission capability, and maintain a meaningful management and staff presence."⁹ The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel.¹⁰ Although management personnel need not be "chained to their desks" during normal business hours, they must "report to work at the main studio on a daily basis, spend a substantial amount of time there and . . . use the studio as a home base."¹¹

7. On December 2, 2010, an agent with the Houston Office observed that there was no

² See 47 U.S.C. § 503(b). See also 47 C.F.R. § 1.80(a)(1).

³ 47 U.S.C. § 312(f)(1).

⁴ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., section 503) As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission's application of those terms").

⁵ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

⁶ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 (2001) ("*Callais Cablevision*") (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage).

⁷ See *Southern California Broadcasting*, 6 FCC Rcd at 4388; *Callais Cablevision*, 16 FCC Rcd at 1362.

⁸ See 47 C.F.R. § 73.1125(a).

⁹ *Main Studio and Program Origination Rules*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026 (1988).

¹⁰ *Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616 (1991), *clarified*, 7 FCC Rcd 6800 (1992).

¹¹ *Jones Eastern of the Outer Banks*, 7 FCC Rcd at 6802.

management or staff presence at Station KBPO's main studio during normal business hours. On December 9 and 13, 2010, the agent observed that there was staff but no management presence at the Station's main studio during normal business hours, despite assurances from a Station employee that the President of the Station would be at the studio on December 13, 2010. Thus, based on the evidence before us, we find that Vision Latina Broadcasting willfully and repeatedly violated section 73.1125 of the Rules by failing to maintain a main studio with a meaningful management and staff presence.

8. Section 73.3526 of the Rules (known as the "public inspection file rule") requires broadcast stations to maintain and make available a public inspection file for public inspection at any time during normal business hours.¹² On December 9, 2010, an agent from the Houston Office inspected the public inspection file for Station KBPO during normal business hours. The public inspection file did not contain a current station authorization,¹³ contour map,¹⁴ ownership report,¹⁵ Public and Broadcasting manual¹⁶ or any issues-programs listings.¹⁷ On December 13, 2010, the agent requested to inspect Station KBPO's public inspection file during normal business hours, but the public inspection file was not made available at that time. Thus, based on the evidence before us, we find that Vision Latina Broadcasting willfully and repeatedly violated section 73.3526 of the Rules by failing to maintain and make available, during more than one visit, a complete public inspection file.

9. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for failing to maintain a main studio with a meaningful staff presence is \$7,000, and the base forfeiture amount for failing to maintain and make available a complete public inspection file is \$10,000.¹⁸ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁹

10. Based upon the facts and circumstances of this case, we conclude that upward adjustments of the base forfeiture amounts are warranted because the violations were egregious and persistent. The Station failed to comply with the main studio requirement during three separate visits; and with respect to the public file violation, the Station's public file failed to contain multiple materials required to be retained during one visit, and the Station failed to provide a public file altogether during a subsequent visit. These circumstances persisted for a period of time without any apparent Station management oversight or efforts to comply. We therefore propose a forfeiture in the amount of \$10,000 for Vision Latina's willful and repeated violation of the main studio rule and \$15,000 for Vision Latina Broadcasting's willful and repeated violations of the public inspection file rule, for a total proposed forfeiture of \$25,000.

11. We direct Vision Latina Broadcasting to submit a statement signed under penalty of perjury by an officer or director of Vision Latina Broadcasting that: (1) Station KBPO's main studio is staffed full-time by full-time managerial and staff personnel (listing the names of the staff and manager and the hours

¹² See 47 C.F.R. § 73.3526.

¹³ See 47 C.F.R. 73.3526(e)(1).

¹⁴ See 47 C.F.R. 73.3526(e)(4).

¹⁵ See 47 C.F.R. 73.3526(e)(5).

¹⁶ See 47 C.F.R. 73.3526(e)(8).

¹⁷ See 47 C.F.R. 73.3526(e)(12).

¹⁸ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁹ See 47 U.S.C. § 503(b)(2)(E).

and days worked); and (2) Station KBPO's public inspection file is complete. This statement must be provided to the Houston Office at the address listed in paragraph 16 within thirty days of the release date of this *NAL*. Failure to comply with this requirement could subject the licensee to additional enforcement actions.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314 and 1.80 of the Commission's Rules, Vision Latina Broadcasting, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violations of sections 73.1125 and 73.3526 of the Rules.²⁰

13. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Vision Latina Broadcasting, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. **IT IS FURTHER ORDERED** that Vision Latina Broadcasting, Inc. **SHALL SUBMIT** a statement as described in paragraph 11, *supra*, to the Houston Office within thirty days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

15. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 270000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²¹ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Vision Latina Broadcasting shall send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

16. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Houston Office, 9597 Jones Road #362, Houston, Texas, 77065 and include the NAL/Acct. No. referenced in the caption. The statement should also be emailed to SCR-Response@fcc.gov.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period;

²⁰ See 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 73.1125, 73.3526.

²¹ See 47 C.F.R. § 1.1914.

(2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Vision Latina Broadcasting, Inc. at 419 Stadium Road, Port Arthur, Texas, 77642.

FEDERAL COMMUNICATIONS COMMISSION

Lee R. Browning
Resident Agent
Houston Office
South Central Region
Enforcement Bureau